

INDIANA ATTORNEY GENERAL



REQUEST FOR PROPOSALS FOR TORT LITIGATION SERVICES

Date of Issuance:

July 14, 2017

Date Proposals Due:

**September 1, 2017
12:00 PM EDT**

RFP #:

RFP 18-TLS

Contact:

**Matthew J. Light
Chief Operating Officer
Office of the Indiana Attorney General
302 West Washington Street
IGCS Fifth Floor
Indianapolis, IN 46204
matt.light@atg.in.gov**

Fax number:

(317) 232-7979

RFP 18-TLS
TORT LITIGATION SERVICES, PART ONE
GENERAL INFORMATION AND REQUESTED PRODUCTS/SERVICES

1.1 INTRODUCTION

The Office of the Indiana Attorney General (OAG) seeks co-counsel for tort litigation services. It is the intent of the OAG to solicit responses to this Request for Proposals (RFP) in accordance with the statement of work, proposal preparation, and specifications contained in this document.

1.2 DEFINITIONS AND ABBREVIATIONS

Following are explanations of terms and abbreviations appearing throughout this RFP. Other special terms may be used in the RFP, but they are more localized and defined where they appear, rather than in the following list.

IAC	Indiana Administrative Code
IC	The Indiana Code
Case	Unless otherwise specified, case means a lawsuit filed on behalf of or against the State of Indiana or an agency thereof. Where noted case may mean a matter for which a Notice of Tort Claim has been served upon the state of Indiana or an agency thereof and pre-litigation activity or discussion has commenced or may be necessary.
Implementation	The successful installation of tort litigation services as specified in the contract resulting from this RFP.
Installation	The delivery and physical setup of products or services requested in this RFP.
Products	Tangible goods or manufactured items as specified in this RFP.
Proposal	A response to this RFP.
Respondent	Person or entity making a proposal.
Services	Work to be performed as specified in this RFP.
Vendor	Any successful Respondent selected as a result of the procurement process to deliver products and services requested by this RFP.

1.3 PURPOSE OF THE RFP

The OAG seeks to contract with one or more outside litigation counsels and/or law firm Respondent(s) to perform all duties necessary and incident to the provision of representation for designated tort litigation matters.

1.4 SCOPE OF THE RFP

The present RFP is intended to procure litigation services for designated tort claims. Within the meaning of this RFP, “Tort” does not include litigation involving so called constitutional torts or civil rights claims including those brought under 42 U.S.C. §1983. Litigation services may include post-trial motions and notices but shall not include appeals.

This document contains the following information that may be useful to anyone wishing to submit a proposal:

TORT LITIGATION SERVICES, PART ONE -- A description of factors affecting the proposal process and procedures.

TORT LITIGATION SERVICES, PART TWO -- A description of the required format and subject content of any acceptable proposals offered in response to this document.

TORT LITIGATION SERVICES, PART THREE -- A general discussion of the method that will be used by an evaluation working group in selecting a Respondent or Respondents to recommend to State officials for further action toward finalizing a written contract document specifying the engagement arrangements for carrying out the RFP objectives.

Attachment -- Details supporting this basic RFP document.

1.5 ISSUING OFFICE

In accordance with Indiana statute, the Indiana OAG has issued this RFP. The content has been prepared by in-house attorneys, supervisory personnel of the OAG, and others. This RFP is being posted to the State of Indiana website (<http://www.in.gov/idoa/proc>). One paper copy of this RFP will be provided free of charge. A nominal fee will be charged for providing additional copies.

1.6 DUE DATE FOR PROPOSALS AND QUESTIONS

All proposals must be received at the address below by the OAG no later than **12 p.m. Indianapolis time** on September 1, 2017. Each Respondent must submit **one original** (marked “Original”) and **four (4) complete copies** of the Proposal, including the transmittal letter and other related documentation as required in this RFP. No more than **one (1) Proposal per Respondent, or in which the Respondent has participated** as an owner, stockholder, unit-holder, partner, limited partner, manager, officer, consultant, joint venture, or member of a partnership or subcontractor, may be submitted.

Each copy of the Proposal must follow the format indicated in TORT LITIGATION SERVICES, PART TWO of this document. Unnecessarily elaborate brochures or other presentations, beyond that sufficient to present a complete and effective proposal, are not desired. All proposals must be addressed to:

Matthew J. Light
Chief Operating Officer
Office of the Attorney General
302 W. Washington Street, IGCS-5th Floor
Indianapolis, IN 46204
Matt.Light@atg.in.gov (use subject line “RFP-18-TLS”)

All Proposal packages must be clearly marked with the RFP number, due date, and time due. Any Proposal received by the OAG after the due date and time will not be considered. Any late Proposals will be returned, unopened, to the Respondent upon request. All rejected Proposals not claimed within 30 days of the proposal due date will be destroyed.

The State of Indiana neither acknowledges nor accepts any obligations for being awarded a contract or in reliance on any assertion herein, all of which are of general applicability and availability to all Respondents.

Caution to Respondents about shipping/mailing: United States Postal Express and Certified Mail are both delivered to the Government Center Central Mailroom and not directly to the OAG. It is the responsibility of the Respondent to make sure that Proposals are received by the OAG on or before the designated time and date.

All questions regarding this RFP must be submitted in writing to the address or e-mail box listed in Section 1.6 no later than **12 p.m. Indianapolis Time** on August 21, 2017. Inquiries may also be submitted via fax (**317-232-7979**) and must be received by the OAG by the time and date indicated above. Questions submitted after 12 p.m. will not be considered. Following the question due date, OAG personnel will assemble a list of the compiled questions asked by all Respondents. The responses will be distributed to all Respondents and posted online on the OAG’s website. Only answers signed by Matthew Light, Chief Operating Officer, or his designee, will be considered official and valid by the State. No negotiations, decisions, or actions shall be initiated by any Respondent as a result of any verbal discussion with any individual State employee.

Except as permitted in this Section, inquiries are not to be directed to any individual staff member of OAG. Such action, after the date of the question deadline set forth above may disqualify Respondent from further consideration for a contract as a result of this RFP.

1.7 PRE-SUBMITTAL CONFERENCE & INFORMATION SESSION

A Pre-Submittal Meeting and Information Session will be held at a place and time to be announced, on August 7, 2017. Attendance at this meeting will not be mandatory, but is highly recommended.

1.8 MODIFICATION OR WITHDRAWAL OF OFFERS

Responses to this RFP may be modified or withdrawn in writing or by fax notice received prior to the exact hour and date specified for receipt of Proposals. The Respondent’s authorized representative may also withdraw the Proposal in person, providing the representative provides satisfactory documentation authorizing the withdrawal, and he or she signs a receipt for the proposal.

Modification to a proposal received by the OAG after the exact hour and date specified for receipt of proposals will not be considered. If it becomes necessary to revise any part of this RFP, or if additional data is necessary for an exact interpretation of provisions of this RFP prior to the due date for proposals, a supplement will be posted by the OAG. If such addendum issuance is necessary, the OAG reserves the right to extend the due date and time of proposals to accommodate such interpretations or additional data requirements.

1.9 PRICING

The OAG recognizes there are certain customary practices for billing and pricing for legal service providers. However, the OAG encourages Respondents, in their responses to the RFP, to be as creative as possible regarding cost to the State, as cost efficiency for the State will be a consideration in determining whether a contract(s) will be awarded based on responses to the RFP. In this regard, favorable consideration will be given to proposals that include appropriate incentives for early resolution of cases, including matters for which a Notice of Tort Claim has been received but formal litigation has not commenced.

The current pricing scheme associated with this RFP is based on a firm per case/per month proposal price for most cases. Respondent's proposed method of compensation may be in any format (for example: hourly, flat, per matter/month, or any combination of billing models), however the proposal must include all pertinent details, so as to allow the State of Indiana to calculate specific dollar amounts that will result under all pertinent case scenarios. To the extent that a proposal rests on hourly billing, the proposal must provide hourly billing rates for each proposed billable timekeeper by name. The successful proposal must contain a breakdown of applicable direct expenses, (including travel, travel time, mileage, copying/printing, postage or common carrier) and if particular categories of expenses are already included in the pricing model, Respondents should so indicate.

The successful vendor will provide a listing of all attorneys performing services under the contract, and will maintain the information in current form. The vendor shall not sub-contract or out-source work to other attorneys under this contract without the express written consent of the OAG.

On or before August 4, 2017 (three (3) days before the Pre-Submittal conference described above in 1.7) the OAG will provide to all Respondents a sampling of case data from the previous calendar year. This sampling of case data will contain information regarding total quantity of cases, case types, new cases opened, and cases closed. The sampling of case data may contain additional information such as levels of complexity, general factual setting, and number of total hours dedicated to litigation of cases similar to those to be out-sourced pursuant to this RFP during the past calendar year. This document is intended to assist Respondent(s) in formulating their financial proposals based on anticipated costs and time commitment, which can be generally determined by resort to the actual historical case data being provided.

As part of their proposals, the Respondent(s) are encouraged to provide a pricing model for affirmative or proactive litigation opportunities that may arise from time to time in the course of their representation of the State in a defensive capacity. For example, discovery and preliminary investigation of a matter in which the State is an initial party defendant may reveal an opportunity for demands to be tendered or affirmative litigation

to be pursued by means of a cross-claim or counter-claim which the vendor may be specifically authorized to pursue on a case-by-case basis. Respondent(s) are encouraged to design and propose innovative compensation models that can include, for example, additional financial incentives to the Respondent(s) as consideration for successful revenue generation, contribution, or limitation of liability.

All pricing proposals and rates must remain open and in effect for a period of not less than 180 days from the proposal due date unless the Respondent withdraws their proposal.

Respondents must provide a cost-effective sample price proposal. Respondents must submit pricing as an all-inclusive, total cost. Respondents must include all components, and an estimated budget that breaks down costs for all services provided.

1.10 DISCUSSION FORMAT

The State reserves the right to conduct discussions, either oral or written, with those Respondents determined by the State to be reasonably viable to being selected for award. If discussions are held, the State may request best and final offers. The OAG will schedule all discussions. Any information gathered through oral discussions should be confirmed in writing.

The request for best and final offers may include:

- Notice that discussions are concluded.
- Notice that this is the opportunity to submit written best and final offers.
- Notice of the date and time for submission of the best and final offer.
- Notice that if any modification is submitted, it must be received by the date and time specified or it will not be considered.
- Notice of any changes in the State's requirements.

The State reserves the right to reject any or all Proposals received, and is under no obligation to award the described litigation services at this time. Each Proposal should contain the Respondent's best terms from a price and technical standpoint. The State reserves the right to reopen discussions after receipt of best and final offers if it is clearly in the State's best interest to do so and the OAG or designee makes a written determination of that fact. If discussions are reopened, the State may issue an additional request for best and final offers from all Respondents determined by the State to be reasonably susceptible to being selected for award. The award of a contract hereunder does not bind the State to assign any particular quantity of Cases nor does it require the State to distribute the Cases evenly among all successful Respondents.

Following evaluation of the best and final offers, the State may select for negotiations the offers that are most advantageous to the State, considering price or cost and the evaluation factors in the RFP.

The State also reserves the right to conduct clarifications to resolve minor issues. If only clarifications are sought, best and final offers may not be requested. The State retains sole authority to determine whether contact with Respondents is for clarification or discussion.

1.11 CONTRACT NEGOTIATIONS

The contract(s) to be awarded will be in substantially the same form as set forth in Attachment A of this document. Section 2.3.4 discusses contract requirements in greater detail. Many of the clauses are required by State law and are non-negotiable. The OAG may consider, in appropriate circumstances, modifying contract clauses if the suggested language and reason for requiring modification is set forth in the RFP.

The RFP will be concluded when the OAG executes a completed contract or contracts, or the OAG determines that no acceptable alternative proposal exists, in which case OAG reserves the right not to proceed with the RFP and/or the contracting process.

1.12 REFERENCE SITE VISITS

At any time after the Proposal Submission date (September 1, 2017) but before the Notification Date for Selected respondents (October 2, 2017), the State may request a site visit to a Respondent's offices or the location from which the services would be performed, to aid in the evaluation of its Proposal.

1.13 TYPE AND TERM OF CONTRACT

The State of Indiana intends to sign a professional services contract with one or more Respondent(s) to provide the services described in this RFP, subject to the reservation provisions listed in Section 1.10.

The term of this contract shall be for a period of two (2) years, beginning January 1, 2018, and ending December 31, 2019.

1.14 CONTRACT REQUIREMENTS

Attachment A of this document is the form of the expected contract resulting from this RFP. The State is not bound to adopt any or all of the attached contract document exemplar, but is in good faith providing same in order to allow Respondent's to make informed decisions in researching, drafting and submitting their Proposals.

1.15 ACCESS TO PUBLIC RECORDS ACT.

All proposals submitted pursuant to this RFP will be maintained as confidential and not disclosed to any other Respondents or third parties until a final award decision is made.

Respondents are advised that materials contained in proposals are subject to the Indiana Public Records Act, IC 5-14-3 *et seq.*, and, after the contract award, may be viewed and copied by any member of the public, including news agencies and competitors. Respondents claiming a statutory exception to the Indiana Public Records Act must place all confidential documents (including the requisite number of copies) in a sealed envelope clearly marked "Confidential" and must indicate in the transmittal letter and on the outside of that envelope that confidential materials are included. The Respondent must also specify which statutory exception provision applies. The State reserves the right to make determinations of confidentiality. If the State does not agree that the information

designated is confidential under one of the disclosure exceptions to the Indiana Public Records Act, it may either reject the Proposal or discuss its interpretation of the allowable exceptions with the Respondent. If agreement can be reached, the proposal will be considered. If agreement cannot be reached, the State will remove the proposal from consideration for award and return the proposal to the Respondent. The State will not characterize pricing proposals as confidential information.

1.16 LEGAL CHARACTERIZATION OF THIS RFP.

The State of Indiana creates no obligation, expressed or implied, by issuing this RFP, or by receipt of any Proposals submitted pursuant hereto. The award of any contract(s) as a result of this RFP shall be at the sole discretion of the OAG. This RFP does not constitute an offer by the OAG. A Respondent does not gain a property interest in the award of a contract unless (1) the Respondent is awarded the contract; and (2) the contract is completely executed.

The OAG will not be responsible for any costs or expenses incurred by a Respondent either in preparing a response to this RFP or incurred in anticipation of being awarded a contract.

1.17 CONTRACT COMPONENTS

Any or all portions of this RFP and the Respondent's Proposal will be incorporated by reference as part of the final contract. Proprietary or confidential material submitted properly (see TORT LITIGATION SERVICES 1.15) will not be disclosed.

1.18 PROPOSAL LIFE

All Proposals must remain open and in effect for a period of not less than 180 days after the due date. Any Proposal accepted by the State for the purpose of contract negotiations shall remain valid until superseded by a contract or until rejected by the State.

1.19 TAXES

The State of Indiana is exempt from federal, state, and local taxes. The State will not be responsible for any taxes levied on the Respondent as a result of the contract resulting from this RFP.

1.20 SECRETARY OF STATE REGISTRATION

In accordance with IC 5-22-16-4, before Respondent can do business with the State, the Respondent must be registered with the Indiana Secretary of State. If Respondent does not have such registration at present, the Respondent should contact

Secretary of State of Indiana
Corporation Division
302 West Washington Street, E018
Indianapolis, IN 46204
(317) 232-6576

for the necessary application form. It is each Respondent's responsibility to register prior to the initiation of any contract discussions.

1.21 EQUAL OPPORTUNITY COMMITMENT

Pursuant to IC 4-13-16.5 and in accordance with 25 IAC 5-5-3, the OAG has determined that there is a reasonable expectation of minority and woman business enterprise participation in this contract. Therefore a contract goal of 1% minority business enterprise participation and 1% woman business enterprise participation has been established, and all Respondents will be expected to comply with the regulation set forth in 25 IAC 5-5-3.

Compliance with these regulations will be taken into consideration during the evaluation phase of the RFP process.

1.22 MINORITY & WOMEN'S BUSINESS ENTERPRISE PARTICIPATION PLAN ("MWBE Plan")

In accordance with 25 IAC 5 1-8, the Respondent shall submit with the Proposal a Minority and Women's Business Enterprise Participation Plan. Please note that the OAG and the Indiana Department of Administration reserve the right to audit and/or verify all information included on minority and women's business enterprise participation plans at any time, both before and after the award of contract hereunder.

The plan should demonstrate that there are minority-owned enterprises and women-owned enterprises participating in the contract. The participation may be, but is not limited to, a subcontractor, a supplier of goods or services to the Respondent, a partner, a limited partner, a joint-venture partner, or a common supplier of such commodities or routine services as office supplies, courier services and/or janitorial services. The Respondent submitting an offer must indicate the name of the owned firms that will participate, either directly or indirectly as describe above, in the award. As to all such participants a contact name and phone number, the service to be supplied and the specific dollar amount from this contract that will be directed toward each firm shall be provided as well.

The Respondent is expected to demonstrate a good faith effort to meet the participation goal of 1% for minority participation and 1% for women owned business participation. A good faith effort consists of documenting the effort that was made to achieve the goal. Respondents are encouraged to contact and work with the Minority Business and Women's Enterprise Division of the Indiana Department of Administration to design a plan to meet established goals. The Minority Business and Women's Enterprise Division's website address is as follows: www.in.gov/idoa/minority.

By submission of the Proposal, the Respondent thereby acknowledges and agrees to be bound by the regulatory processes involving the State of Indiana's Minority and Women's Business Enterprise Program. Questions involving the regulations governing the minority and women's business enterprise participation plan and the application for waiver from the contract goal should be directed to:

Minority Business and Women's Enterprise Division
Indiana Department of Administration
402 W. Washington St., Room W469
Indianapolis, IN 46204
(317) 232-3061

1.23 AMERICANS WITH DISABILITIES ACT

To the extent applicable to a particular Respondent, the Respondent(s) specifically agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 *et seq.* and 47 U.S.C. 225).

1.24 SUMMARY OF MILESTONES

The following timeline is only an illustration of the RFP process. The dates associated with each step are not to be considered verbatim. Due to the unpredictable nature of the evaluation period, these dates are commonly subject to change. At the conclusion of the evaluation process all Respondents will be informed of the evaluation team's determinations.

<u>ACTIVITY</u>	<u>COMPLETION DATE</u>
Date of Issuance:	July 14, 2017
Historical Case Data Available for Respondent Analysis	(No later than) August 3, 2017
Pre-Submittal Conference & Information Session	August 7, 2017
Respondent inquiry period ends	August 21, 2017
Final State responses to inquiries	August 25, 2017
Proposal submission date	September 1, 2017
Reference Site Visit	September 1 – October 2, 2017
Notify selected Respondent(s)	October 2, 2017
Contract finalized and signed	October 16, 2017

TORT LITIGATION SERVICES, PART TWO PROPOSAL PREPARATION INSTRUCTIONS

2.1 GENERAL

To facilitate the timely evaluation of Proposals, a standard format for proposal submission has been developed. All Respondents are required to format their proposals in a manner consistent with the guidelines described below:

- Each item must be addressed in the Proposal, or the Proposal may be rejected.
- The transmittal letter should be in the form of a letter. The business and technical proposals must be organized under the specific section titles as listed below.
- The OAG may, at its option, allow all Respondents a five-calendar-day period to correct errors or omissions to their Proposals. Should this necessity arise, the State will contact each Respondent affected. Each Respondent must submit written corrections to the Proposal within five calendar days of notification. The intent of this option is to allow proposals with only minor errors or omissions to be corrected. Major errors or omissions, such as the failure to include prices, will not be considered by the State as a minor error or omission and may result in disqualification of the proposal from further evaluation.

2.2 TRANSMITTAL LETTER

The Transmittal Letter must address the following topics except those specifically identified as “optional.”

2.2.1 Summary of Ability and Desire to Supply the Required Products and Services

The transmittal letter must briefly summarize the Respondent’s ability to supply the requested products and services that meet the application requirements defined in TORTS THREE of this RFP. The letter must also contain a statement indicating the Respondent’s willingness to provide the requested products and services subject to the terms and conditions set forth in the RFP including, but not limited to, the State’s mandatory contract clauses.

2.2.2 Signature of Authorized Representative

A person authorized to bind the Respondent to its representations and who can certify that the information offered meets all general conditions including the information requested in TORTS 2.3.4, must sign the transmittal letter. Such person’s authority to so act must be consistent with the information contained in TORTS 2.2.1 of this RFP. **In the transmittal letter please indicate the principal contact for the proposal along with an address, telephone, and fax number as well as an e-mail address.**

2.2.3 Respondent Notification Request

It is the Respondent’s obligation to notify the OAG of any changes in address that may have occurred since the origination of this solicitation. The OAG will not be held responsible for incorrect vendor/contractor addresses.

2.2.4 Fiscal Impact to the State

Respondent should describe with specificity how their proposed compensation structure and their plan for handling referred Cases will provide the most advantageous results to the State of Indiana with respect to expenses for legal services, judgments, settlements, and related factors.

2.2.5 Other Information

This item is optional. Any other information the Respondent may wish to briefly summarize will be acceptable.

2.3 BUSINESS PROPOSAL

The Business Proposal must address the following topics except those specifically identified as “optional.”

2.3.1 General

This optional section of the business proposal may be used to introduce or summarize any information the Respondent deems relevant or important to the State’s successful acquisition of the products and services requested in this RFP.

2.3.2 Respondent Company Structure

The legal form of the Respondent’s business organization, the state in which incorporated (if a corporation), the types of business ventures in which the organization is involved, and a chart of the organization are to be included in this section.

2.3.3 Facilities and Resources

The Respondent must include information with regard to the organization’s resources that it deems advantageous to the successful provision of the requested Services. This might include management capabilities and experience, technical resources, and operational resources not directly assigned to this project, but available if needed.

2.3.4 Required Contract Clauses

Indiana law requires the inclusion of certain language in all contracts. Also, the nature of services requested in this RFP may present a need for the inclusion of certain commitments in any contract resulting from this RFP. Attachment A of this document contains a sample contract that could be similar to the one resulting from this RFP. Some clauses within the sample contract are mandatory and other clauses are desirable to the State. NOTE: Those clauses that are mandatory are as follows:

Scope of Legal Services (Section 2)
Consideration and Payment (Section 3)
Term (Section 4)
Compliance with Laws (Section 9), including Telephone Privacy (Section 9(D))
Conflict of Interest (Section 10)
Drug-Free Workplace Certification (Section 13)
Employment Eligibility Verification (Section 14)
Funding Cancellation (Section 15)
Nondiscrimination (Section 20)
Non-collusion and Acceptance (Page 7)

Respondents should review these clauses in detail because a specific agreement to these mandatory clauses is required in the Transmittal Letter.

2.3.5 Pricing and Charges

The State requests the pricing associated with this RFP remain open and in effect for a period of not less than 180 days from the proposal due date as well as any extensions agreed to in the course of contract negotiations.

Respondents must provide a cost-effective sample price proposal.

2.3.6 References

The Respondent should include a list of at least three (3) clients for whom the Respondent has provided services that are the same or similar to those services requested in this RFP. Any state government or local government for whom the Respondent has provided these services should be included. Information provided should include the name, address, and telephone number of the client facility and the name, title, and phone/fax numbers of a person who may be contacted for further information. The more similar the referenced services are to those requested in this RFP, a greater weight may be attached to the references in the State's evaluation process.

2.3.7 Registration to do Business

Respondents providing the services required by this RFP must be registered to do business within the state by the Indiana Secretary of State. The address contact information for this office may be found in TORTS 1.20 of this RFP. This process must be concluded prior to contract negotiations with the State. It is the Respondent's responsibility to complete the required registration with the Secretary of State. The Respondent must indicate the status of registration, if applicable, in this section of the proposal.

2.3.8 Authorizing Document

Respondent personnel signing the Transmittal Letter of the proposal must be legally authorized by the organization to commit the organization contractually. This section shall contain proof of such authority. A copy of corporate bylaws or

a corporate resolution adopted by the board of directors indicating this authority will fulfill this requirement.

2.3.9 Respondent Contract Requirements

This section is optional. If the Respondent wishes to include any language other than that discussed in the Business Proposal, this language should be included in this section. For each clause included in this section, the Respondent should indicate that the clause is required by the Respondent in any contract resulting from this RFP and why it is required (if the required clause is unacceptable to the State, the Respondent's proposal may be considered unacceptable) or indicate that the clause is desired (but not required) by the Respondent in any contract resulting from this RFP.

2.4 TECHNICAL PROPOSAL

The Technical Proposal must be divided into the sections as described below. Every point made in each section must be addressed in the order given. The same outline numbers must be used in the response. RFP language should not be repeated within the response. Where appropriate, supporting documentation may be referenced by a page and paragraph number. However, when this is done, the body of the technical proposal must contain a meaningful summary of the referenced material. The referenced document must be included as an appendix to the technical proposal with referenced sections clearly marked. If there are multiple references or multiple documents, these must be listed and organized for ease of use by the State.

Proposals must be responsive to and contain all of the following information:

2.4.1 General Information

- Respondent's legal name, address, phone and fax numbers, email address, and website if available. A history or summary of the Respondent's defense of tort claims is appreciated.
- The number of attorneys and support staff, and the names and resumes of all individuals who would directly provide the services. Respondent must show the capability of dedicating sufficient staff to manage at least one hundred (100) cases.

2.4.2 Prior Experience

- Respondent personnel dedicated to performing services under this contract must have a Managing Attorney who is a responsible person having all of the following experience:
 - Manager should demonstrate a proven track record in reducing case files, decreasing settlement and judgment amounts, as well as lessening the costs of defense for a client or agency;
 - Manager must demonstrate an ability to manage and defend a large number of cases;
 - Manager must have substantial experience in the state court system.

- Respondent must provide evidence of its ability to manage a selection of staff.

2.4.3 Contact Person

The state of Indiana will designate a principal point of contact for administration of this contract for Respondents receiving contracts.

2.4.4 Additional Information

- Submit a letter of reference from a financial institution and proof of a compliant IOLTA account.
- Respondent must have the ability to generate case status reports on a monthly basis.
- Respondent will have suitable means to adequately communicate with state agencies and the OAG at the commencement of the contract and throughout the pendency of the contract.
- Respondent must have the ability to travel throughout the state or specified geographic region as needed.
- All potential conflicts of interest must be disclosed and will be considered.
- In the provision of these Services, it is possible that a third-party contractor may bear some or all of the tort responsibility. The Respondent will be called upon to make demand on the contractor and its insurance carrier in appropriate instances, and should evaluate if this requirement may place the Respondent in repeated conflicts situations.
- Respondent must have the ability to review and advise on tort investigation proposed settlements without receiving assignment of the file.
- Respondent must have the ability to meet with different offices and agencies of the State in Indianapolis upon request and with reasonable notice but without receiving assignment of the file.
- Respondent should be familiar with statutory approval requirements for settlements and with important considerations involving independence and autonomy of the OAG and other separately elected officials, as those considerations relate to handling of tort litigation matters and associated issues.

2.5 MINORITY & WOMEN'S BUSINESS ENTERPRISE PARTICIPATION PLAN

A properly completed and signed MWBE Participation Plan should be included as part of the proposal. Respondents must indicate the name of the racial minority and woman owned firm(s) with which it anticipates it will work; the contact name and phone number at the firm(s); the service supplied by the firm(s); and the specific dollar amount from this contract that will be directed toward each firm. If the above mentioned goals (1.21) can not be achieved by directing proceeds from this contract toward racial minority and woman owned enterprises, the Respondent may demonstrate that an amount, equal to each of the above goals, of the firms overall annual proceeds (from all business) are directed to racial minority and/or woman owned enterprises. Please note: Respondents' claims for participation will be audited and/or validated prior to contract award.

TORTS THREE PROPOSAL EVALUATION

3.1 PROPOSAL EVALUATION PROCEDURE

The State of Indiana will select a group of OAG in-house attorneys and supervisory personnel to act as proposal evaluators. This team will be responsible for evaluating proposals with regard to compliance with RFP requirements and making a final recommendation. All evaluation personnel will use the evaluation criteria stated in TORTS 3.2.

The procedure for evaluating the proposals against the evaluation criteria will be as follows:

- 3.1.1 Each proposal will be evaluated for form on a pass/fail basis. Proposals that are incomplete or otherwise do not conform to proposal submission requirements will be eliminated from consideration. Respondents should note that agreement to the State's mandatory contract clauses is required in the Transmittal Letter and will be evaluated for such under the form category.
- 3.1.2 Each proposal will be evaluated on the basis of the categories included in TORTS 3.2. A point/percentage score will be established for each category.
- 3.1.3 If technical proposals are close to equal, greater weight could be given to price.
- 3.1.4 Based on the results of this evaluation, qualifying Proposal(s) determined to be the most advantageous to the State, taking into account all of the evaluation factors, may be selected by the OAG for further action. If, however, the OAG decides that no proposal is sufficiently advantageous to the State, the State may take whatever further action is deemed necessary to fulfill its needs. If, for any reason, a proposal is selected and it is not possible to consummate a contract with the Respondent, the OAG may begin contract preparation with the next qualified Respondent or determine that no such alternate proposal exists.

3.2 EVALUATION CRITERIA

Proposals will be evaluated based upon the proven ability of the Respondent to satisfy the requirements of the RFP in a cost-effective manner. Each of the evaluation criteria categories is described below with a brief explanation of the basis for evaluation in that category. The percentage of the total point score associated with each category is indicated following the category name.

3.2.1 Financial Stability (5 percent)

Respondent or its principals has provided comparable services for at least five (5) years, has a line of credit that is commensurate with its business needs and law firm size, and has malpractice insurance coverage of at least \$750,000.00.

3.2.2 Human Resources (5 percent)

Respondent will dedicate sufficient staff to manage at least one hundred (100) cases.

3.2.3 Management Ability (10 percent)

Respondent has demonstrated the ability to manage a selection of staff and outside counsel.

3.2.4 Qualifications, Experience, and Expertise (35 percent)

Respondent demonstrates the ability to provide tort litigation services and has experience and expertise in the defense of tort claims against governmental entities.

3.2.5 Understanding of Needs (20 percent)

Respondent demonstrates an understanding of the needs of the OAG as demonstrated in the proposal.

3.2.6 Pricing and Fee Structure (20 percent)

Respondent has a creative pricing proposal that will result in a contract that is cost-efficient for the State of Indiana.

3.2.7 Minority & Women's Business Participation Plan (5 percent)

A clear and specific MWBE Participation Plan is included with the proposal, along with sufficient details as to dollar amounts and participants.

Final note: Processing RFP

All proposals will be reviewed by members of the OAG. References may be contacted. It is possible that persons participating in the selection process will interview finalists. The Attorney General or his designee will, in the exercise of his sole discretion, determine which proposals offer the best means of serving the interests of the State. The exercise of this discretion will be final.

**ATTACHMENT A—
AGREEMENT WITH OUTSIDE COUNSEL**

EDS # _____

THIS AGREEMENT (“this Agreement”) is between the State of Indiana acting by and through _____ (the “State”) and _____ having an office at _____ (“Counsel”).

WHEREAS, the State needs the services of a law firm to _____ (the “Legal Services”); and

WHEREAS, Counsel has the experience and expertise to provide the Legal Services for the State.

NOW THEREFORE, in consideration of the premises and the mutual promises herein contained, it is agreed by and between the State and Counsel as follows:

1. Consent of the Attorney General. As required by IC §4-6-5-3, the Office of the Indiana Attorney General has given its written consent for Counsel to perform the Legal Services described in this Agreement.

2. Scope of Legal Services. Counsel shall provide the Legal Services approved by the Attorney General, which services are more fully described and set forth on **Exhibit A**, attached and incorporated fully herein. Counsel shall execute its responsibilities by following and applying the highest professional standards. If the State becomes dissatisfied with the work product or the working relationship with any individual assigned to work pursuant to this Agreement, the State may request in writing the replacement of any or all such individuals, and Counsel shall grant such request.

3. Consideration and Payment.

A. Counsel will be paid as set forth on **Exhibit B**, attached and incorporate herein. Total remuneration under this Agreement shall not exceed \$_____.

B. All payments shall be made thirty five (35) days in arrears in conformance with State fiscal policies and procedures and, as required by IC §4-13-2-14.8, by electronic funds transfer to the financial institution designated by Counsel in writing unless a specific waiver has been obtained from the Indiana Auditor of State. No payments will be made in advance of receipt of the goods or services that are the subject of this Agreement except as permitted by IC §4-13-2-20.

4. Term. The term of this Agreement shall begin on _____ and end on _____.

5. Access to Files and Records. The State shall have full, immediate, and unrestricted access to the work product of the Counsel during the term of this Agreement. Upon termination or expiration of this Agreement, Counsel shall, without further request and at no cost to the State, turn over to the State all files relating to the work performed under this Agreement. Counsel acknowledges that it may be required to submit to an audit of funds paid pursuant to this Agreement, and shall maintain at its offices all books, accounting records, and other evidence pertaining to costs incurred and invoiced under this Agreement. Any such audit shall be

conducted in accordance with IC § 5-11-1-1, *et seq.*, and audit guidelines specified by the State. Such materials shall be available during the term of this Agreement and for three (3) years from the date of termination or expiration, for inspection by the State or its authorized designee. Copies thereof shall be furnished at no cost to the State if requested.

6. Assignment. Counsel shall not assign or subcontract any part of the Legal Services to be performed under this Agreement without the State's prior written consent. Counsel may assign its right to receive payments to such third parties as it may desire without the prior written consent of the State, provided that Counsel gives written notice (including evidence of such assignment) to the State thirty (30) days in advance of any payment so assigned. The assignment shall cover all unpaid amounts under this Agreement and shall not be made to more than one party.

7. Changes in Work. Counsel shall not change scope of the Legal Services to be performed pursuant to this Agreement or undertake additional work on behalf of the State unless authorized in writing by the State. No claim for additional compensation shall be made in the absence of a prior written agreement.

8. Compliance with Licensing Requirements.

A. Counsel, its partners and employees shall comply with all applicable registration and licensing requirements, rules, standards and codes of conduct governing the practice of law and the transaction of business regarding this Agreement.

B. Counsel shall immediately notify the State if any disciplinary actions are brought against it or any of its attorneys in any jurisdiction.

C. Counsel certifies, by entering into this Agreement, that neither it nor any of its partners, associates or any other attorney associated with Counsel is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from entering into this Agreement by any federal agency or by any department, agency or political subdivision of the State of Indiana.

9. Compliance with Laws.

A. Counsel and its agents shall abide by all ethical requirements that apply to persons who have a business relationship with the State as set forth in IC §4-2-6, *et seq.*, IC §4-2-7, *et seq.* and the regulations promulgated thereunder. **If Counsel has knowledge, or would have acquired knowledge with reasonable inquiry, that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, Counsel shall ensure compliance with the disclosure requirements in IC 4-2-6-10.5 prior to the execution of this Agreement.** If Counsel is not familiar with these ethical requirements, Counsel should refer any questions to the Indiana State Ethics Commission, or visit the Inspector General's website at <http://www.in.gov/ig/>. If Counsel or its agents violate any applicable ethical standards, the State may, in its sole discretion, terminate this Agreement immediately upon notice to Counsel. In addition, Counsel may be subject to penalties under IC §§ 4-2-6, 4-2-7, 35-44.1-1-4, and under any other applicable laws.

B. Counsel certifies by entering into this Agreement that neither it nor its principal(s) is presently in arrears in payment of taxes, permit fees or other statutory, regulatory or judicially required payments to the State of Indiana. Counsel agrees that any payments currently due to the State of Indiana may be withheld from payments due to Counsel. Additionally, further work or payments

may be withheld, delayed, or denied and/or this Agreement suspended until Counsel is current in its payments and has submitted proof of such payment to the State.

C. Counsel affirms that, if it is an entity described in IC Title 23, it is properly registered and owes no outstanding reports to the Indiana Secretary of State.

D. As required by IC §5-22-3-7:

- (1) The Counsel and any principals of the Counsel certify that:
 - (A) The Counsel, except for de minimis and nonsystematic violations, has not violated the terms of:
 - (i) IC §24-4.7 [Telephone Solicitation Of Consumers];
 - (ii) IC §24-5-12 [Telephone Solicitations]; or
 - (iii) IC §24-5-14 [Regulation of Automatic Dialing Machines];in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) the Counsel will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.
- (2) The Counsel and any principals of the Counsel certify that an affiliate or principal of the Counsel and any agent acting on behalf of the Counsel or on behalf of an affiliate or principal of the Counsel, except for de minimis and nonsystematic violations,
 - (A) has not violated the terms of IC §24-4.7 in the previous three hundred sixty-five (365) days, even if IC §24-4.7 is preempted by federal law; and
 - (B) will not violate the terms of IC §24-4.7 for the duration of the Agreement, even if IC §24-4.7 is preempted by federal law.

10. Conflict of Interest.

A. Counsel represents and warrants that, after due and diligent inquiry, it is satisfied that it has no Conflict of Interest (as that term is defined in the *Indiana Rules of Professional Conduct*) that will preclude it from providing the Legal Services.

B. Counsel represents and warrants that its performance of the Legal Services will not violate the statutes and regulations relating to the ethical conduct of state employees, including but not limited to of IC §4-2-6-6 (“Present or former state officers, employees, and special state appointees; compensation resulting from confidential information”), IC §4-2-6-9 (“Conflict of economic interest”), IC §4-2-6-10.5 (“Prohibition against financial interest in contract”).

11. Continuity of Services. Counsel recognizes that the Legal Services provided under this Agreement are vital to the State and must be continued without interruption and that, upon expiration or termination of this Agreement, a successor, either the State or another Counsel, may continue them. Counsel shall use its best efforts and cooperation to effect an orderly and efficient transition to a successor, and shall be reimbursed for all reasonable transition costs.

12. Disputes. Counsel agrees that, the existence of a dispute notwithstanding, it will continue without delay to carry out all its responsibilities under this Agreement that are not affected by the dispute. Should Counsel fail to continue to perform its responsibilities as regards all non-disputed

work, any additional costs incurred by the State or Counsel as a result of such failure shall be borne by Counsel, and Counsel shall make no claim against the State for such costs.

13. Drug-Free Workplace Certification. As required by Executive Order No. 90-5, April 12, 1990, issued by the Governor of Indiana, Counsel hereby covenants and agrees to make a good faith effort to provide and maintain a drug-free workplace. Counsel will give written notice to the State within ten (10) days after receiving actual notice that Counsel, or an employee of Counsel in the State of Indiana, has been convicted of a criminal drug violation occurring in the workplace. False certification or violation of this certification may result in sanctions including, but not limited to, suspension of contract payments, termination of the Agreement and/or debarment of contracting opportunities with the State of Indiana for up to three (3) years.

In addition to the provisions of the above paragraphs, if the total amount set forth in this Agreement is in excess of \$25,000.00, Counsel certifies and agrees that it will provide a drug-free workplace by:

A. Publishing and providing to all of its employees a statement notifying them that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the Counsel's workplace and specifying the actions that will be taken against employees for violations of such prohibition;

B. Establishing a drug-free awareness program to inform its employees of: (1) the dangers of drug abuse in the workplace; (2) Counsel's policy of maintaining a drug-free workplace; (3) any available drug counseling, rehabilitation, and employee assistance programs; and (4) the penalties that may be imposed upon an employee for drug abuse violations occurring in the workplace; and

C. Notifying all employees in the statement required by subparagraph (A) above that as a condition of continued employment the employee will: (1) abide by the terms of the statement; and (2) notify Counsel of any criminal drug statute conviction for a violation occurring in the workplace no later than five (5) days after such conviction;

D. Notifying in writing the State within ten (10) days after receiving notice from an employee under subdivision (C)(2) above, or otherwise receiving actual notice of such conviction;

E. Within thirty (30) days after receiving notice under subdivision (C)(2) above of a conviction, imposing the following sanctions or remedial measures on any employee who is convicted of drug abuse violations occurring in the workplace: (1) take appropriate personnel action against the employee, up to and including termination; or (2) require such employee to satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency; and

F. Making a good faith effort to maintain a drug-free workplace through the implementation of subparagraphs (A) through (E) above.

14. Employment Eligibility Verification. As required by IC §22-5-1.7, Counsel swears or affirms under the penalties of perjury that Counsel does not knowingly employ an unauthorized alien. Counsel further agrees that:

A. Counsel shall enroll in and verify the work eligibility status of all his/her/its newly hired employees through the E-Verify program as defined in IC §22-5-1.7-3. Counsel is not required to participate should the E-Verify program cease to exist. Additionally, Counsel is not required to participate if Counsel is self-employed and does not employ any employees.

B. Counsel shall not knowingly employ or contract with an unauthorized alien. Counsel shall not retain an employee or contract with a person that Counsel subsequently learns is an unauthorized alien.

C. Counsel shall require his/her/its subcontractors, who perform work under this Agreement, to certify to Counsel that the subcontractor does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Counsel agrees to maintain this certification throughout the duration of the term of a contract with a subcontractor.

The State may terminate for default if Counsel fails to cure a breach of this provision no later than thirty (30) days after being notified by the State

15. Funding Cancellation. When the director of the State Budget Agency makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be canceled. A determination by the Director of the State Budget Agency that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

16. Governing Law. This Agreement shall be governed, construed, and enforced in accordance with the laws of the State of Indiana, without regard to its conflict of laws rules. Suit, if any, must be brought in the State of Indiana.

17. Indemnification. Counsel agrees to indemnify, defend, and hold harmless the State, its agents, officials, and employees from all third-party claims and suits, including court costs, attorney's fees, and other expenses caused by any act or omission of Counsel and/or its subcontractors in the performance of this Agreement. The State shall not provide such indemnification to Counsel.

18. Independent Contractor. Counsel and the State are acting in their individual capacities and not as employees, partners, joint ventures or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume any liability for any injury to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees of the other party.

19. Insurance. Counsel shall secure and keep in force during the term of this Agreement Lawyers Professional Liability Insurance in such amounts and with such coverage acceptable to the State. Counsel shall be responsible for providing all necessary unemployment and worker's compensation insurance for its employees or partners. Failure to maintain insurance as required in this Agreement may be deemed a material breach of contract entitling the State to immediately terminate this Agreement.

20. Nondiscrimination. Pursuant to the Indiana Civil Rights Law, specifically including IC §22-9-1-10, and in keeping with the purposes of the federal Civil Rights Act of 1964, the Age Discrimination in Employment Act, and the Americans with Disabilities Act, the Counsel

covenants that it shall not discriminate against any employee or applicant for employment relating to this Agreement with respect to the hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of the employee's or applicant's race, color, national origin, religion, sex, age, disability, ancestry, status as a veteran, or any other characteristic protected by federal, state, or local law ("Protected Characteristics"). Counsel certifies compliance with applicable federal laws, regulations, and executive orders prohibiting discrimination based on the Protected Characteristics in the provision of services. Breach of this paragraph may be regarded as a material breach of this Agreement, but nothing in this paragraph shall be construed to imply or establish an employment relationship between the State and any applicant or employee of the Counsel or any subcontractor.

21. Notice to Parties. Whenever any notice, statement or other communication is required under this Agreement, it shall be sent by first class mail or via an established courier/delivery service to the following addresses, unless otherwise specifically advised.

A. Notices to the State shall be sent to:

B. Notices to Counsel shall be sent to:

As required by IC §4-13-2-14.8, payments to Counsel shall be made via electronic funds transfer in accordance with instructions filed by Counsel with the Indiana Auditor of State.

22. Penalties/Interest/Attorney's Fees. The State will in good faith perform its required obligations hereunder and does not agree to pay any penalties, liquidated damages, interest or attorney's fees, except as permitted by Indiana law, in part, IC §5-17-5, IC §34-54-8, IC §34-13-1 and IC § 34-52-2-3.

23. Severability. The invalidity of any section, subsection, clause or provision of this Agreement shall not affect the validity of the remaining sections, subsections, clauses or provisions.

24. Taxes. The State is exempt from most state and local taxes and many federal taxes. The State will not be responsible for any taxes levied on Counsel as a result of this Agreement.

25. Termination. This Agreement may be terminated, in whole or in part, by the State whenever, for any reason, the State determines that such termination is in the best interest of the State. Termination of services shall be affected by delivery to Counsel of a Termination Notice at least fifteen (15) business days prior to the termination effective date, specifying the extent to which performance of services under such termination becomes effective. The State will not be liable for legal services performed after effective date of termination. Counsel may terminate this Agreement as provided by Rule 1.16, *Indiana Rules of Professional Conduct*.

26. Travel. No travel expenses will be reimbursed pursuant to this Agreement unless specifically agreed to by the State in writing and in advance of the travel.

27. Waiver of Rights. No right conferred on either party under this Agreement shall be deemed waived and no breach of this Agreement excused, unless such waiver is in writing and signed by the party claimed to have waived such right.

Binding Authority; Non-Collusion and Acceptance

The undersigned attests, subject to the penalties for perjury, that the undersigned is Counsel, or that the undersigned is the properly authorized partner or member of Counsel. Further, to the undersigned's knowledge, neither the undersigned nor any other partner, member, employee, representative, agent or officer of Counsel, directly or indirectly, has entered into or been offered any sum of money or other consideration for the execution of this Agreement other than that which appears upon the face hereof. **Furthermore, if the undersigned has knowledge that a state officer, employee, or special state appointee, as those terms are defined in IC 4-2-6-1, has a financial interest in the Agreement, Counsel attests to compliance with the disclosure requirements in IC 4-2-6-10.5.**

IN WITNESS WHEREOF, Counsel and the State by their duly authorized representatives have executed this Agreement as of the dates set forth below.

[Counsel]

[State Agency]

By: _____

(Name and Title, Printed)

Date: _____

Approved by:

Indiana Department of Administration

By: _____(for)

_____ (for)

Jessica Robertson, Commissioner

Date: _____

APPROVED as to Form and Legality:

Office of the Attorney General

_____(for)

Curtis T. Hill, Jr., Attorney General

Date: _____

By:

(Name and Title, Printed)

Date: _____

Approved by:

State Budget Agency

By:

Jason D. Dudich, Director

Date:

Exhibit A
Scope of Legal Services

Exhibit B
Consideration and Payment